

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ANDREA FIELDS,
MATTHEW DAVISON, also known as Jessica Davison,
and VANKEMAH D. MOATON,

Plaintiffs,

v.

Case No. 06-C-112

WARDEN JUDY P. SMITH,
THOMAS EDWARDS,
JAMES GREER,
ROMAN KAPLAN, MD,
and RICHARD RAEMISCH,

Defendants.

**ORDER DECLARING WIS. STAT. § 302.386(5m) UNCONSTITUTIONAL AND
ENJOINING ENFORCEMENT OF STATUTE**

The plaintiffs in this case seek declaratory and injunctive relief claiming that the defendants have violated the United States Constitution by enforcing 2005 Wisconsin Act 105, codified as Wis. Stat. § 302.386(5m), and depriving them of medical treatment for their serious health condition, Gender Identity Disorder. Further, the plaintiffs ask the court to find that the defendants enforced the statute without regard for individualized medical judgment and in contrast to the medical treatment that the defendants provide to similarly situated inmates in Wisconsin Department of Corrections (DOC) facilities. Consequently, the plaintiffs ask this court to find that the defendants have violated their Fourteenth Amendment right to equal protection and their Eighth Amendment right to be free from cruel and unusual punishment. Moreover, the plaintiffs ask this court to find that enforcement of the statute evinces deliberate indifference to the serious medical needs of

the plaintiffs as well as the serious medical needs of all other inmates of DOC facilities. Lastly, the plaintiffs seek a declaration that Wis. Stat. § 302.386(5m) is unconstitutional on its face and as applied.

After careful consideration, the court concludes that the defendants' application of Wis. Stat. § 302.386(5m) to these plaintiffs constitutes deliberate indifference to the plaintiff's serious medical needs in violation of the Eighth Amendment inasmuch as enforcement of the statute results in the denial of hormone therapy without regard for the individual medical needs of inmates and the medical judgment of their health care providers.

The court further finds that Wis. Stat. § 302.386(5m) is unconstitutional on its face under the Eighth Amendment because it bans the use of any Wisconsin State resources or federal funds passing through the government to provide hormone therapy and, thereby, requires the withdrawal of any such ongoing hormone therapy for inmates in DOC facilities without regard for the medical need for that treatment.

The court further finds that Wis. Stat. § 302.386(5m) prevents DOC medical personnel from evaluating inmates for treatment because such evaluation would be futile in light of the statute's ban on such hormone therapy. Furthermore, the application of Wis. Stat. § 302.386(5m) to the plaintiffs violates the plaintiffs' constitutional right to equal protection because there is no rational basis for treating the plaintiffs differently than similarly situated inmates.

The court further finds there is no rational basis for Wis. Stat. § 302.386(5m) and that the statute is invalid on its face, as it violates the Equal Protection Clause of the

Fourteenth Amendment. A memorandum decision shall be issued forthwith. Now, therefore,

IT IS ORDERED that enforcement of Wis. Stat. § 302.386(5m) violates the plaintiffs' Eighth Amendment right to be free from cruel and unusual punishment and Fourteenth Amendment right to equal protection.

IT IS FURTHER ORDERED that Wis. Stat. § 302.386(5m) is unconstitutional.

IT IS FURTHER ORDERED that the defendants are permanently enjoined from the enforcement of Wis. Stat. § 302.386(5m).

Dated at Milwaukee, Wisconsin, this 31st day of March, 2010.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
Chief U.S. District Judge